



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0312; FRL-9954-08-Region 4]

#### Air Plan Approval; KY; Removal of Stage II Gasoline Vapor Recovery Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving changes to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environmental Cabinet, on May 3, 2016. This SIP revision removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allows for the decommissioning of existing Stage II equipment in Boone, Campbell and Kenton Counties in Kentucky (hereinafter referred to as the “Northern Kentucky Area” or “Area”). EPA determined that Kentucky’s May 3, 2016, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0312. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is (404) 562-9222. She can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On February 3, 1998, the Commonwealth of Kentucky submitted a SIP revision to address the Stage II requirements<sup>1</sup> for the Northern Kentucky Area.<sup>2</sup> EPA approved that SIP

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<sup>1</sup>Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle's fuel tank, when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

<sup>2</sup> On November 6, 1991, EPA designated and classified Boone, Campbell and Kenton Counties in Kentucky as part of the seven-county area in and around the Cincinnati-Hamilton, OH-KY, area as a moderate nonattainment area for the 1-hour ozone NAAQS. See 56 FR 56694. The "moderate" classification triggered various statutory requirements for the Area, including the requirement pursuant to section 182(b) (3) of the CAA to require all owners

revision, containing Kentucky regulation 401 KAR 59:174 – *Stage II controls at gasoline dispensing facilities*, in a notice published on February 8, 1999 (63 FR 67586). On May 3, 2016, the Commonwealth of Kentucky submitted a SIP revision to EPA seeking modifications of the Stage II requirements in the Northern Kentucky Area. Specifically, it sought the removal of the Stage II requirements in Kentucky regulation 401 KAR 59:174 – *Stage II Controls at gasoline dispensing facilities*. EPA published a proposed rulemaking on August 17, 2016, to approve that SIP revision. The details of Kentucky’s submittal and the rationale for EPA’s action are explained in the proposed rulemaking. *See* 81 FR 54780. The comment period for this proposed rulemaking closed on September 16, 2016. EPA did not receive any comments, adverse or otherwise, during the public comment period.

## **II. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Kentucky regulation 401 KAR 59:174 – *Stage II Controls at gasoline dispensing facilities*, effective May 3, 2016, which removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference

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and operators of gasoline dispensing systems to install and operate Stage II. EPA redesignated the Northern Kentucky portion of the Area to attainment for the 1-hour ozone NAAQS, effective July 31, 2002. *See* 67 FR 49600.

by the Director of the Federal Register in the next update to the SIP compilation.<sup>3</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information)

### **III. Final Action**

EPA is taking final action to approve the May 3, 2016, revision to Kentucky Air Regulation 401 KAR 59:174, submitted by the Commonwealth of Kentucky. This action removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities and allows for the decommissioning of existing Stage II equipment. EPA has determined that Kentucky’s May 3, 2016, SIP revision related to the State’s Stage II rules is consistent with the CAA and EPA’s regulations and guidance related to removal of Stage II requirements from the SIP and that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l).

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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<sup>3</sup> 62 FR 27968 (May 22, 1997).

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Ozone,  
Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 3, 2016.

Heather McTeer Toney  
Regional Administrator,  
Region 4.



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart S—Kentucky**

2. Section 52.920(c) Table 1 is amended under Chapter 59 by revising the entry for “401 KAR 59:174” to read as follows:

**§ 52.920 Identification of plan.**

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(c) \* \* \*

**EPA Approved Kentucky Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Chapter 59 New Source Standards</b>				
**	**	*	*	*
401 KAR 59:174	Stage II controls at gasoline dispensing facilities	5/3/2016	[Insert citation of publication]	
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[FR Doc. 2016-24779 Filed: 10/13/2016 8:45 am; Publication Date: 10/14/2016]